

STAT

1 Sep 82

MEMORANDUM FOR: THE RECORD  
FROM: IM, C/P&PS  
SUBJECT: Reviewing EEO and Grievance Settlement Cases

Per discussion with DD/P/PA&E, we have authority to seek from the responsible officers in the Directorates (EEO counselors/officers, grievance officers,) any additional details we might need in order to determine the technical propriety of the cases we are asked to make that judgement on. For those from the DDO, we will double check  to insure there is no problem with our seeking additional information.

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Orig: i's P&PS file  
1:

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### Health insurance for restored employees

Employees improperly removed or suspended, upon reinstatement, may at their option, enroll as if they were new employees or have their coverage restored, with appropriate adjustments made for contributions and claims. This make-whole remedy is governed by 5 U.S.C. § 8908 and CSC regulations contained in paragraph S8-5, Federal Personnel Manual Supplement 890-2, Instruction 34, dated September 24, 1973. B-180021, March 20, 1975.

### Government life insurance for restored employees

Employees improperly removed or suspended upon reinstatement are deemed to have been insured during the period. However, deductions otherwise required by law shall not be withheld from any backpay awarded for the period unless death or accidental dismemberment of the employee occurs during such period. This make-whole remedy is governed by 5 U.S.C. § 8706(f) and CSC regulations contained in paragraph S4-23, Federal Personnel Manual Supplement 870-1, Instruction 14, dated September 12, 1973. B-180021, March 20, 1975.

### Employment discrimination

The Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000-16, provides make-whole remedies for individuals where Federal agencies have taken discriminatory action against them with respect to employment opportunities, compensation, terms, conditions, or privileges of employment, hiring or discharge because of their race, color, religion, sex, or national origin. There are some significant differences between the remedies provided in the Back Pay Act of 1966 and the Equal Employment Opportunity Act of 1972 which have a bearing on the extent to which employees are made whole. In some respects remedies under the Equal Employment Opportunity Act are broader, in that remedies are provided for applicants for employment as well as employees and expungement of records is also allowed. However, backpay under the Equal Employment Opportunity Act of 1972 is to be computed in the same manner as prescribed for the Back Pay Act of 1966 in 5 C.F.R. § 550.804. The Equal Employment Opportunity Act of 1972, in contrast to the Back Pay Act of 1966 limits the period of retroactivity for which backpay is permitted to 2 years from the date the action is brought. B-180021, March 20, 1975.



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7-13

CIVILIAN PERSONNEL LAW MANUAL  
Title 1 - Compensation  
Office of General Counsel  
U.S. General Accounting Office

The ~~only~~ problem that arises in the informal adjustment agreed to by the Complainant and the Agency is that of the length of <sup>the</sup> retroactive period of back pay. The General Accounting Office Civilian Personnel Law Manual, the Code of Federal Regulations (29 CFR 1613,271 (b)(1)), and U.S. Code Annotated (42 USCA 2000e-5(g)) indicate a limit of two years back pay dating from the date of the complaint. ~~XXXXXXXXXX~~ Mr. Thomas Douglass, Technical Guidance Division, EEOC (634-6855) confirmed that this is correct even in the use of an informal adjustment. Thus, in this case rather than back pay for the entire period 3 March 1978 - 13 October 1981, back pay could only be paid for the period 11 November 1979 - 10 November 1981. (10 November 1981 was the date the complaint was initiated.)

The informal adjustment should be so amended and a personnel action reflecting the amended dates be effected.

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☐ UNCLASSIFIED☒ INTERNAL  
USE ONLY☐ CONFIDENTIAL☐ SECRET

## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

C/P&amp;PS/PA&amp;E

1006 Ames

EXTENSION

NO.

DATE 28 Jan 1982

STAT  
STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. D/OC

FYI

2.

3.

OC/Pers

3 - per our conversation, paperwork returned. I leave it to you and STAT EEO counsellor to amend the agreement. 1152 also should be amended. When complete, the package should be returned to TRB for further action.

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15.

FORM  
3-62610 USE PREVIOUS  
EDITIONS☐ SECRET☐ CONFIDENTIAL☐ INTERNAL  
USE ONLY☐ UNCLASSIFIED

## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

C/P&PS/PA&E

1006 Ames

EXTENSION

NO.

DATE

21 Jan 82

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

EA/OP

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Bob: We have reviewed the attached and done some research and have come up with a problem: the Equal Opportunity Act of 1972 limits the period of retroactive backpay to 2 years from the date the action is brought (see attached excerpt from Civilian Personnel Law Manual published by GAO). (Backpay is a broad term that covers all kinds of compensation, not just salary.)

As you know, it was determined years ago that the Agency is not exempt from the EO Act and thus, we find no way around this provision,

verified with EEOC that the 2-year limitation is still valid, and that it applies not only to formal but also to informal solutions such as this. Thus, using 10 November 1981 as the "date the action is brought" (the date she first contacted the counselor according to the memorandum of adjustment), it appears that [ ] can receive backpay only from 11 November 1979 rather than the 3 March 1978 date indicated in the attached. In view of this, the informal adjustment must be amended and the amended dates reflected on the 1152 at which point the action can be signed. (I have alerted [ ]

to this development...) Also have discussed with [ ]

[ ]

Revised [ ]

tele [ ]

## ROUTING AND TRANSMITTAL SLIP

Date

TO: (Name, office symbol, room number,  
building, Agency/Post)

Initials

Date

1. DD/Pers

2.

3.

4. C/TRB

5.

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

## REMARKS

1 - FYI - attached is response from OGC on your referral of [ ] case. I talked with [ ] about it (she raised the issue while we were discussing another policy issue on home leave) who advises that the use of the grievance date which preceded this EEO claim is not meant to serve as a basic policy. She had tracked down details not provided to us in the attached papers which she discussed with EEOC and it was their determination that in this case it was appropriate to use the grievance date to determine back pay eligibility. I gather from [ ] that the employee was encouraged to file an EEO claim...

4 - for processing - note time frame, must be done this pay period.

**DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions**

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

C/P&amp;PS/OF

30 Aug 82

Phone No.

5041-102

OPTIONAL FORM 41 (Rev. 7-76)  
Prescribed by GSA  
FPMR (41 CFR) 101-11.205

☆ GPO : 1981 O - 341-529 (120)

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## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

EXTENSION

NO.

DATE

27 August 1982

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.   
DD/Policy, Analysis

30 AUG 1982

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2. & Evaluation (OP  
1006 Ames

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AF to 1. According to the EEOC, USG Agencies are bound by the two-year restriction on back pay in resolving EEO complaints at the administrative level. However, this will not prevent the proposed settlement of  case because, under the circumstances, the date of the filing of the grievance may be treated as the date of the filing of the EEO complaint for purposes of calculating allowable back pay.

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General Journal

82-07684

## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Deputy Director for Policy,  
Analysis and Evaluation

EXTENSION

NO.

DATE

23 July 1982

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

EA/OP  
5E58 Hqs

26 JUL 1982

RDK

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DD/OP<sup>2</sup> 6 JUL 1982

AF

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D/OP

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OGC -

8/27/82

AF

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We ( [ ] and myself) have reviewed the attached paperwork. As OGC coordinated on the "offer" cable, we assume [ ] was aware of the limitation on retroactive compensation of two years prior to the filing of a claim and the parameters of the home leave system (signing of agreements, intention to serve overseas, etc.) and he is satisfied that the action is appropriate from a legal view. I raise this as I would not like to see, during the audit process, the voucher questioned and [ ] required to submit a refund.

TRB can handle the paperwork in this situation and will coordinate with OF who will have to compute the amounts of money and leave.

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